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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: **JAN** 0 3 2005

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced

Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration

and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director Administrative Appeals Office **DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

- (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
 - (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
 - (B) Waiver of Job Offer.
 - (i)... the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in a field related to her occupation from the University of Delhi. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens

seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

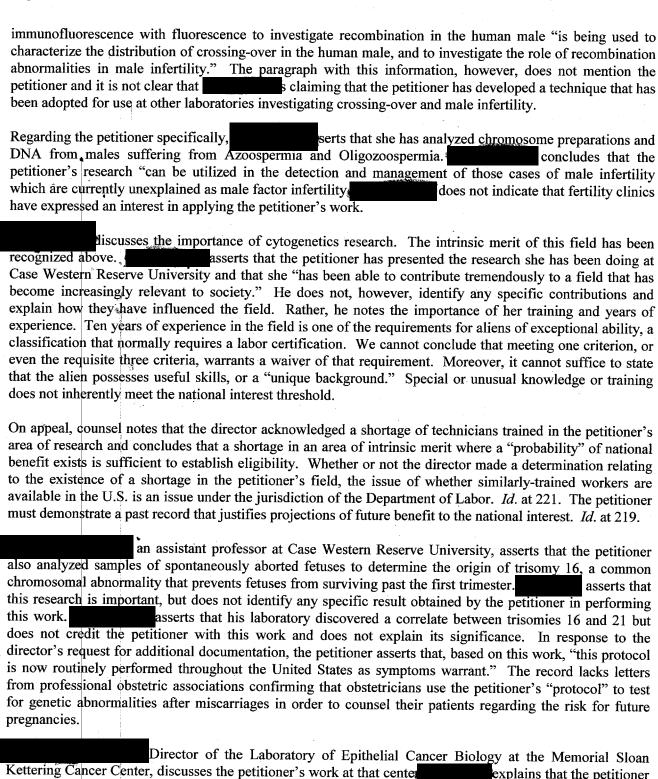
We concur with the director that the petitioner works in an area of intrinsic merit, cytogenetics, and that the proposed benefits of her work, linking chromosome abnormalities with the resulting condition (such as infertility and cancer), would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

As stated above, the petitioner obtained her Ph.D. from the University of New Delhi in 1989. While her evaluation from Foreign Credential Evaluations, Inc. indicates that the degree was awarded in the field of anthropology, her degree indicates that her thesis investigated the ecogenetics of congenital craniofacial malformations, an area of research consistent with her current work. The petitioner performed postdoctoral research at that institution until 1991. In that year, the petitioner spent two months as a research fellow at the University of Pittsburgh before accepting a position as a visiting scientist at the University of Zurich for two years. From 1994 to 1995, the petitioner was a visiting scientist at the Swiss Federal Institute of Technology. The petitioner returned to India in 1996 to work as the Associate Director of Research at Symbolic Systems. Inc. From 1998 to 2000, the petitioner worked as a research scientist at the

Center. At the time of filing, the petitioner was working as a research scientist at Case Western Reserve University in the laboratory e

Dr. Hassold asserts that his laboratory uses cytogenetics to study chromosome abnormalities that lead to spontaneous abortions and male infertility. He explains that the laboratory's technique of combining

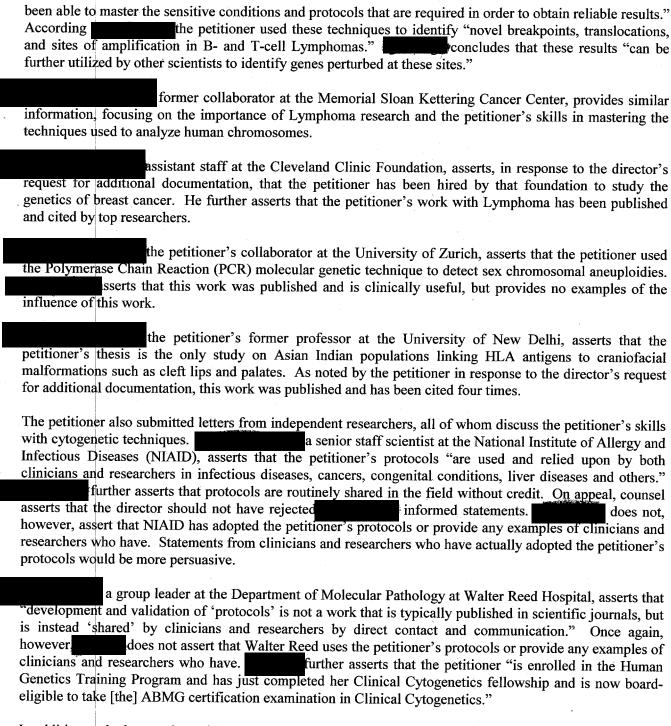


successfully applied Comparative Genomic Hybridization and Spectral Karyotyping to her study of non-

Hodgkin's Lymphoma, achieving "excellent results."

explains that the petitioner

explains that "very few researchers have



In addition to the letters, the petitioner has submitted evidence of four published articles, including her thesis, and evidence of oral and poster presentations. The petitioner's thesis was published in 1991 and three independent research teams have cited it four times, two of which were after the date of filing. One independent research team cited the petitioner's 1998 article on myeloma. Finally, after the date of filing, six

research teams cited the petitioner's 2002 article on non-Hodgkin's Lymphoma. The director noted that most of the citations are in articles dated after the date of filing and concluded that without copies of the citing articles, "the degree of reliance" could not be determined.

On appeal, the petitioner submits the articles that cite her work. Counsel argues that the limited number of publications produced by the petitioner should not preclude eligibility. While we acknowledge that there are factors in the medical field that can limit a researcher's ability to publish, such as intellectual property rights, we cannot conclude that a mere explanation for a minimal publication history is sufficient. Rather, the petitioner must meet her burden with other types of evidence, such as evidence of patents and an interest in purchasing or licensing the technology. In the petitioner's case, given the claims made by the petitioner, it can be expected that the petitioner would be able to produce letters from clinicians and researchers applying her protocols. The record does not include such letters.

On appeal, the petitioner submitted evidence that her 2002 article on non-Hodgkin's Lymphoma has now been cited 10 times. One article receiving moderate attention after the date of filing, in the absence of letters that more clearly identify specific contributions and examples of how those contributions are already influential in the field, is insufficient to establish a consistent track record of success as of the date of filing.

Finally, on appeal, counsel asserts that the labor certification process is too lengthy. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223. Even if we were to accept that the labor certification process is somehow inapplicable to the petitioner's field, and counsel has not demonstrated that the national interest waiver was intended as a blanket waiver for all researchers, that finding is not by itself sufficient to warrant a waiver. *Id.* at 218, n.5.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER:

The appeal is dismissed.